IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 729 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE D.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJ

Versus

SURESHBHAI R MACHHI

Appearance:

1. Criminal Appeal No. 729 of 1991

Mr.K.T.Dave,learned A.P.P. for appellant No. 1

MR JM BUDDHBHATTI for Respondent No. 1

CORAM : MR.JUSTICE D.K.TRIVEDI

Date of decision: 28/11/2002

ORAL JUDGEMENT

1. Appellant State of Gujarat has challenged the order of acquittal recorded by the learned Judicial Magistrate, First Class, Jhagadia dated 8.7.91 in Summary

Case No.545/89 wherein the learned Magistrate has on examining the evidence led by the prosecution acquitted the respondent accused from the offences punishable under Sections 66(1)(b) and Section 85(1)(3) of the Bombay Prohibition Act, 1949. Mr.K.T.Dave, learned A.P.P., has taken us through the evidence of the prosecution witnesses recorded as well as the documentary evidence on the record of the case and order of acquittal recorded by the learned Magistrate. It is the contention of Mr. Dave that even as per the prosecution case, the respondent accused was working in a Police Department and as per the information received by the complainant, when a police party has raided the place where accused was working as a police constable, he was found in a drunken condition and he was lying and there was a smell of alcohol. it is the contention of Mr.Dave that in view of the evidence led by the complainant and other witnesses and the medical evidence, the learned Magistrate was not right in acquitting the accused. He accordingly prayed that the order of acquittal be set aside and the accused be convicted for the offences for which he was charged.

2. Mr. Buddhbhatti, learned advocate appointed to defend the respondent accused, has supported the judgment of acquittal recorded by the learned Magistrate as according to him that in view of the findings recorded by the learned Magistrate, which is based on appreciating evidence, this is not a case where this court is required to interfere with the order of acquittal recorded by the learned Magistrate and further that even the Panch witnesses have not supported the prosecution case. He accordingly prayed that the Appeal filed by the State be dismissed and order of acquittal recorded by the learned Magistrate be confirmed.

3. To examine the contentions raised by Mr.Dave, learned A.P.P. and Mr. Buddhbhatti, I was taken through the evidence of complainant Shri Saiyed, who was at the relevant time working as Senior Police Sub Inspector at Jhagadia Police Station. As found from the complaint dated 29.10.88 when the complainant was on duty at Jhagadia Police Station he received a telephone at about 11.55 from Rajpipla from Senior Police Inspector Shri Gehlot and the information was that the accused, who is on duty as a Police Constable at Sarsa Hill is having consumed alcohol and accordingly on getting the said message with the police party he had proceeded towards the said place and accused - an unarmed Police Constable bearing Buckle No.852 was found lying on a floor in a drunken condition and from his mouth vomiting was coming out and when his mouth was smelled, there was smell of

alcohol. The eyes of the accused were also found half opened with reddish colour. Accused was not in a position to control himself and when he was asked to produce any pass or permit, he could not produce the same and accordingly said accused was arrested for the offences under Section 66(1)(b) and Section 85(1)(3) of the Bombay Prohibition Act, 1949 and the offence was registered and necessary panchanama was drawn between 12.35 P.M. and 13.0 P.M. and the accused was placed for trial before the learned Magistrate. As the trial was a summary trial, a summary case was registered being Summary Case No.545/89.

4. The defence of the accused is that because Police Sub Inspector Shri Saiyed was inimical to him, a false case was instituted.

5. There are several witnesses who were examined during the trial including Dr.Rathod. As found from the evidence of Dr. Rathod P.W.1 that when he was on duty on 29.10.88 at 2.20 hours accused was brought by Head Constable Patil bearing buckle No.961 for examination and he examined accused and has found that from his mouth there was a smell of alcohol and he was not steady and he has examined the accused and he noted the following things:
(1) There was smell of alcohol in his breath.
(2) Speech was normal.
(3) His walk was steady.
(4) His retinas were widened.

According to him that the person has consumed alcohol. However, he was not under the influence of the same. Blood samples from the accused were taken and the same were sent before the Chemical Analyser at Surat. He has also proved Certificate issued by the Forensic Laboratory and as per Report Exh.6 there was a percentage of alcohol to the extent of 0.1541. He has also proved the medical certificate about the examination of accused and the report regarding blood of the accused.

6. As found from the evidence of P.W.2 complainant Shri Saiyed, he has deposed that he was on duty as Senior Police Sub Inspector at Jhagadia Police station between 26.8.86 and 7.2.89 and he has received the telephone wordhy on 29.10.88 at 11.55 hours from Rajpipla from Police Sub Inspector Shri Gehlot intimating him that at Sarsa Hill a person from B.S.F. R.T.P.C. is found drunken condition and after getting the said Wordhy he has registered the same in the Wordhy Register and he alongwith two unarmed Police Constables alongwith two

Panchas had proceeded in a private vehicle towards Sarsa Hill and the accused who was wearing lungi and Banian was lying on a floor and it is found that the said person is also vomiting and on smelling the mouth of the accused, there was a smell of alcohol. The said accused was semi-conscious and he could not control himself. Panchanama to that effect was recorded in presence of panchas and the accused was arrested at 13.0 hours and he was brought at Jhagadia Police Station and the complaint was recorded against the accused and the complaint was accordingly registered at Jhagadia Police Station being C.R.No.416/88 for the offences under Sections 66(1)(b) and Section 85(1)(3) of the Bombay Prohibition Act,1949. He has investigated the said case and the accused was sent to Medical Officer at Referral Hospital at Jhagadia for examination. He has also recorded statement of the persons accompanying him when the accused was arrested from Sarsa Hill. In cross examination he has denied the suggestion that he has not drawn the panchanama at the place where the accused was found. He has further admitted that he has not taken vomitting part, which was found on the body of the accused. He has denied the suggestion that accused is not vomitting at that time. He has also denied that he has a quarrel with the accused. He has denied that the accused had not consumed alcohol and he deposed falsely. Panch witness has not supported the prosecution case.

7. As found from the judgment where the learned Magistrate has, while examining the evidence led by the prosecution, acquitted the accused by giving benefit of doubt on two grounds, which he has referred to in judgment paragraphs 4 and 5. As observed by the learned Magistrate, the learned Magistrate has in term held that the prosecution witnesses have supported the case of the prosecution. However, while appreciating the evidence of Doctor and the documents on the record of the case, the learned Magistrate has held that as found from the evidence it creates doubt in respect of the collection of blood from the accused and the prosecution has not explained the delay in sending the blood for examination. The learned Magistrate has in term held that after collecting the blood from the accused, the prosecution has not explained that the said sample of blood has remained with whom and further that the sample of blood, which was sent, was having no seal. There is no original seal of the Doctor. The learned Magistrate has accordingly while giving benefit of doubt to the accused observed that the sample of blood in question is examined after more than two weeks and considering this evidence, the learned Magistrate has given benefit of doubt to the

accused.

8. On considering the judgment under challenge and on examining the contentions raised by Mr. Dave, the learned A.P.P., it is found that the learned Magistrate has given a cogent reason while giving benefit of doubt to the accused and the prosecution has not explained when the blood sample was sent before the Laboratory and examination of the same was done after more than 15 days and during this period, where such substance had remained and further that even there was no seal of the Doctor on the said sample. Considering the findings recorded by the learned Magistrate, I am of the view that this is not a case where this court is required to interfere with the order of acquittal recorded by the learned Magistrate. Hence Appeal is dismissed. The order of acquittal recorded by the learned Judicial Magistrate, First Class, Jhagadia dated 8.7.91 in Summary Case No.545/89 acquitting the accused for the offences punishable under Sections 66(1)(b) and Section 85(1)(3) of the Bombay Prohibition Act, 1949 is hereby confirmed.

(D.K.Trivedi,J)
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